



National Mining Association[®]
Protecting America's Future

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Ms. Elizabeth Montgomery
Regulatory Coordinator
Minerals Management Service
Mail Stop 4230
1849 C Street, N.W.
Washington, D.C. 20240

RE: Comments of the National Mining Association; Review of Regulations (65 Fed. Reg. 81465, December 26, 2001)

Dear Ms. Montgomery:

On December 26, 2001, the Minerals Management Service (MMS) published the referenced notice in the Federal Register asking for public comment on MMS regulations that should be eliminated, or revised, or could be more performance based. This letter sets forth the response of the National Mining Association (NMA) to this solicitation. NMA's members are producers of most of the Nation's coal, metals, industrial and agricultural minerals; manufacturers of mining and mineral processing machinery and supplies; transporters; financial and engineering firms; and other businesses related to mining.

MMS Administrative Appeals Process:

In 1973, the Department of Interior (DOI) promulgated administrative procedures for the appeal of final orders and decisions of officers of the MMS, directing that appeals would be to the MMS Director. MMS is the only DOI agency with an intermediate appeal to the director of the agency. All other DOI agency appeals go directly to the Interior Board of Land Appeals (IBLA). NMA maintains that this aberration should be corrected in order to remove a duplicative and inefficient component of the agency's administrative review process.

Background:

In 1995, DOI established the Royalty Policy Committee (RPC) to provide advice to the Secretary on the management of federal and Indian leases, revenues, and other minerals-related policies. The RPC includes representatives from states, Indian Tribes and allottee organizations, mineral industry associations, other federal agencies, and the public. At its first meeting in September 1995, the RPC established eight subcommittees, including the Appeals and Alternative Dispute Resolution Subcommittee (Subcommittee). In February 1997, the Subcommittee submitted a consensus report for consideration by the RPC.

In this report, the Subcommittee agreed that the principal purpose of the MMS administrative appeals process should be the expeditious and independent review of cases involving disputed facts, legal issues, or policy upon the request of the adversely affected party. The Subcommittee recognized that the MMS appeals process has been under criticism and serious review since 1991, and that substantial reform is needed.

While the Subcommittee was working, the Federal Oil and Gas Royalty Simplification and Fairness Act (FOGRSFA) was enacted. One provision of FOGRSFA established a 33-month time limitation for the DOI to make final decisions on appeals involving royalties due on federal oil and gas leases. This provision afforded an additional impetus to the Subcommittee to reduce the overall time it takes for making final DOI decisions on appeal. In the same time frame, MMS regulation that would place a 16-month limitation on the all appeals to the MMS Director. The same proposal would have established a 33-month time frame for IBLA decisions, but only for decisions involving royalty payments under federal oil and gas leases. In order to avoid unfair and inconsistent treatment the rule would have allowed, the Subcommittee strongly urged that the recommendations in its report be substituted for MMS's proposed regulation.

Specific Subcommittee Recommendations:

In March 1997, the RPC approved the February report of the Subcommittee and forwarded it to Secretary Babbitt for his consideration. The approved report included recommendations that:

- MMS resolve all fundamental policy questions before the agency (or delegated state or Indian Tribes) issues a demand or order.
- DOI encourage the resolution of disputes prior to completing the formal administrative appeals process.
- DOI clarify the standing of Indian lessors and "states concerned" with respect to the administrative appeals process.
- DOI change the structure of the administrative appeals process so that appeals of MMS, state, or tribal orders are taken directly to the IBLA under a special set of rules applicable to royalty appeals. The rules would specify some differences for appeals involving Indian leases and coal and other solid mineral leases, because

the provisions of the FOGRSFA do not apply to these categories of leases.

- Each demand or order contain a clear and complete statement of the facts, law, and agency policy decisions upon which the demand is based.
- The contents of the administrative record be identified early in the process and prior to the filing of formal briefs with the IBLA.

On September 22, 1997, The Secretary informed the RPC that he largely agreed with the recommendations of the report. However, in a memorandum to the MMS Director, dated June 1, 2000, the Secretary declared that contrary to the RPS's recommendation, he had decided to retain the two-tier appeals procedure. The Secretary's position was reiterated in a letter to the RPC on August 11, 2000.

If the objective of this "review of regulations" exercise is, in fact, to review essential regulations that should be revised, because they are inefficient, the recommendations of the RPC regarding the MMS appeals process should be the starting point. NMA urges the MMS to revisit the decision not to streamline the MMS appeals process made by the former Secretary of Interior, and initiate action to make the MMS appeals process fairer and more efficient by implementing all the recommendations of the Subcommittee. .

Sincerely,

A handwritten signature in cursive script, reading "David O. Finkenbinder", followed by a horizontal line.

David O. Finkenbinder